

NARCA CFPB UPDATE

November 6, 2012

I. CFPB SUPERVISORY HIGHLIGHTS – The Past as a Guide to the Future

Last week the Consumer Financial Protection Bureau (“CFPB”) issued its first [Supervisory Highlights](#) wherein it discusses, among other things, shortcomings it found during its examinations of financial services providers between July 2011 and September 30, 2012. This document is worth reading inasmuch as the focus of the CFPB’s interest in the past will provide collection law firms with some insight as to what to expect in the future. Supervisory Highlights is divided into two main sections, Compliance Management Systems and Significant Violations Detected.

It will be critical to have a top-notch compliance program that ensures policies and procedures are clearly communicated to employees and, fully implemented, and regularly followed. Good intentions count for little, and the CFPB states it “found one or more situations in which the financial institution had articulated many elements of an appropriate compliance policy, but the policy was not followed.”

Regarding the scope of compliance programs, the CFPB does provide some indication, in a footnote, that they will not be using a “one size fits all” analysis, with the effectiveness of the compliance program being paramount:

The CFPB understands that compliance management will be handled differently by large, complex financial organizations at one end of the spectrum, and small entities that offer a narrow range of financial products and services at the other end. While the characteristics and manner of organization will vary from entity to entity, the CFPB expects compliance management activities to be a priority and to be appropriate for the nature, size, and complexity of the financial institution’s consumer business.

There has been much concern regarding law firms being considered “service providers” under the Larger Participant rule. The flip side will be how collection law firms manage their service providers. The CFPB notes it has found several instances in which the activities of service providers were not effectively managed, and stated:

The mere fact that a financial institution enters into a business relationship with a service provider does not absolve the financial institution of responsibility for complying with Federal consumer financial law and does not give it license to “turn a blind eye” to violations of Federal consumer financial laws and regulations by the entity that is acting on its behalf. Depending upon the circumstances, responsibility for legal violations by a service provider may lie with the financial institution as well as with the service provider.

In terms of “significant violations detected,” the CFPB points to the actions involving Capital One Bank, Discover Bank and American Express Companies. The violations of these companies included deceptive marketing, inadequate management of service providers, improper treatment of consumer disputes in violation of the FCRA and deceptive collection practices.

II. APPEALS OF SUPERVISORY MATTERS

The CFPB has also adopted a [supervisory appeals process](#) “to promote a constructive supervisory relationship with the financial service providers.”

When: A collection law firm, for example, may initiate an appeal within 30 days of receiving a final CFPB compliance rating that is less than satisfactory (3, 4 or 5) or a supervisory letter conveying an “adverse finding” which is defined as “a Matter Requiring Attention by the board of directors or principal(s) of the entity,” and this is also applicable when the compliance rating is less than satisfactory.

How: An appeal may be requested by sending an e-mail to the Associate Director for Supervision, Enforcement and Fair Lending. The appeal request should include:

- a description of the issues in dispute, supporting information presented to examination staff, and any supporting information not presented previously to examiners, if any, including the reasons for not having presented it, and recommendations for resolution;
- a summary of informal efforts made to resolve the dispute with examiners or other CFPB Supervision staff;
- a statement of whether the entity wants to make an oral presentation to the CFPB; and
- a statement that the entity’s board of directors or principal(s) has authorized the filing of the appeal.

Who: The Associate Director then appoints an Assistant Director who within five business days of receipt will assign the appeal to an appellate committee composed of one or more representatives from CFPB Headquarters Supervision management (aside from the Assistant Director who chairs the committee) and at least two representatives from CFPB regional management who were not involved in the supervisory matter being appealed.

What: After the appellate committee is formed it will:

- review the supervised entity’s written appeal, the examination report or supervisory letter at issue, and supporting documentation for both;
- if applicable, send a copy of the appeal to the prudential regulator of the appealing entity and solicit its views;
- solicit input from other CFPB personnel, such as examination staff and CFPB Headquarters staff (including those involved in the specific matter under appeal); and
- hear a presentation from the appealing entity, if requested.

A written decision will be delivered to the Associate Director within 45 days of assignment the matter to the committee, and the Associate Director will review and modify the decision as necessary. The final decision of the Associate Director is final and the proceedings are considered confidential, though the CFPB states information may be shared with state regulators.

III. NARCA COMMENTS TO CFPB

NARCA has filed two comments in the several weeks in response to requests from the CFPB.

First, the CFPB requested comments on its draft [CFPB Strategic Plan 2013-2018](#). NARCA's comments identified a number of concerns and can be viewed at the Members Only section of the NARCA website. Member Login → Resources → Federal Government Affairs → CFPB Resources.¹

Second, the CFPB [requested input](#) on effective financial education approaches, including tools, topics and dissemination strategies, that will help improve consumers' financial decision-making capabilities. For its response, NARCA solicited input from NARCA members with experience presenting *Avoiding the Debt Trap*, and NARCA's comment can be found [here](#).

¹ A user name and password is necessary to access the [Member Only Section](#) of the NARCA website. If you are having trouble logging in or need a username and password, contact NARCA at 202.861.0706 or by email at narca@narca.org.